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SECURITY INFORMATION

7 October 1952

MEMORANDUM FOR: The Director of Central Intelligence

SUBJECT: Refusal by Executive to Provide Information to Congress

1. Several of the many cases where the President or heads of executive departments have refused to furnish information requested by Congress are summarized below.

2. In 1879 George F. Seward, Consul General of the United States in China, appeared before the House Committee on Expenditures in the State Department, which was investigating his official conduct. A subpoena duces tecum had been served upon him to produce certain books and papers. Seward refused and was not held to be in contempt for so doing. The Chairman of the Committee submitted a report in which he stated:

"And whenever the President has returned (as sometimes he has) that, in his judgment, it was not consistent with the public interest to give the House such information, no further proceedings have ever been taken to compel the production of such information. Indeed, upon principle, it would seem that this must be so. The Executive is as independent of either house of Congress as either house of Congress is independent of him, and they cannot call for the records of his action or the action of his officers against his consent, any more than he can call for any of the journals and records of the House or Senate." *

The report indicated the perils incident to divulging "state secrets" to a committee of the House and stated that the executive must make the decision in each case:

"Somebody must judge upon this point. It clearly cannot be the House or its committee, because they cannot know the importance of having the doings of the executive department kept secret. The head of the executive department, therefore, must be the judge in such case and decide it upon his own responsibility to the people, and to the House, upon a case of impeachment brought against him for so doing, if his acts are causeless, malicious, willfully wrong, or to the detriment of the public interests." *

* Rpt. No. 111, March 3, 1879, 45th Cong., 3rd Sess.

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3. In 1941 the Chairman of the House Committee on Naval Affairs requested the Federal Bureau of Investigation to furnish reports and correspondence on investigations made by the Department of Justice into strikes and subversive activities at industrial establishments having naval contracts. The request was not complied with. Attorney General Jackson replied in an opinion in which he stated as follows:

"It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to 'take care that the laws be faithfully executed,' and that congressional or public access to them would not be in the public interest." *

4. On January 20, 1945, at a hearing of the Select Committee to Investigate the Federal Communication Commission the Director of the Federal Bureau of Investigation refused to testify as to certain matters on which the President had directed him to remain silent. There is no record in the hearing reports of any action taken by the Committee to force a response.

5. Various executive Department heads refused to provide information desired by this same Committee, among them being Harold D. Smith, Director of the Bureau of the Budget, James L. Fly, Chairman of the Federal Communications Commission, Robert P. Patterson, Acting Secretary of War, and James Forrestal, Acting Secretary of the Navy. Secretary Patterson stated in his reply to the Committee as follows:

"The President directs that the committee be informed that he, the President, refuses to allow the documents to be delivered to the committee as contrary to the public interests. For the same reason, I am unable to permit the witnesses to appear." **

6. In December 1947 the Joint Committee on Reduction of Non-essential Federal Expenditures sought reports of personnel figures from the Central Intelligence Agency. Full disclosure was politely refused because of the risk of publication and dissemination beyond the Committee. A compromise was effected whereby the Committee Chairman, Senator Harry F. Byrd, was given access to certain information which the Committee desired.

7. By letter of January 24, 1952, President Truman directed the Secretary of State not to furnish the Senate Internal Security Subcommittee with the loyalty file of John Carter Vincent and certain other papers and reports from the files of the State Department. These had been requested by Senator McCarran. The President based his decision on the public interest, stating

* 40 Opinions Attys. Gen. p. 46, April 30, 1941.

** Hearings, Select Committee to Investigate the Federal Communications Commission, Vol. 1, pp. 46, 48 - 67.

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that the production of such information would create a serious danger of intimidation and demoralization of Foreign Service personnel, as well as involve the disclosure of confidential information and sources of information. Also, the release of individual loyalty files to congressional committees was cited as contrary to the President's directive of March 13, 1948, on this subject, which was addressed to all officers and employees in the executive branch of the Government.

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